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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,389	05/04/2005	Alan Bentley	Q83815	5050
23373 7590 02/08/2008 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER				
HARTMANN, GARY S				
ART UNIT		PAPER NUMBER		
3671				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/509,389

Applicant(s)

BENTLEY, ALAN

Examiner

Gary Hartmann

Art Unit

3671

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Election/Restrictions

The restriction requirement has been withdrawn.

Claim Objections

Claim 14 is objected to because of the following informalities: "cone" (line 3) should be --cones--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7, 8, 10, 11 and 13-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oster (US 4,844,420) in view of Ross (U.S. Patent 5,467,548).

Regarding claim 1, Oster discloses a barrier unit (seen as barrier 10) capable of being mounted on a road traffic control upright (seen as post 22 and adapter 36) including a tape cartridge (52), hollow to define a tape storage cavity (12), a spindle (30) rotatably mounted in the cavity having tape (18) wound thereon, a deploying aperture in the cartridge through which at least a leading edge of the tape projects externally (see Figure 1), a receiving means on the cartridge to engagingly receive a leading edge of tape from another cartridge in use (16),

mounting means (12) on a lower part of the cartridge to mount the cartridge on or about an upper part of an upright (22), the mounting means comprising a tubular lower portion (seen as the tubular part of the lower part of housing 12) shaped to cooperatively engage around an upper portion of the upright in an interference fit (as seen in Fig. 2A since there's frictional contact between the bottom of housing 12 and adapter 36). Oster does not teach the tapered configuration; however, it is well known to use tapered configurations with roadway barriers, as exemplified by the barrier unit on the traffic cone taught by Ross (Figure 1). Further, Ross shows mounting means (30) configured such that deformation at the juncture between the mounting means and the traffic cone (Figure 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used this as the shape of Oster in order to best suit a particular application. Note that there is no patentable distinction between deformation in the cone or deformation in the mounting means, since this is a simple reversal of parts.

Regarding claim 3, the tubular lower portion is slotted such as to be resiliently deformable (since there is a slot 24).

Regarding claim 4, the tape is an elongate thin flexible strip of material (see Col 2, lines 1-2).

Regarding claim 7, means are provided to facilitate storage of the tape after use (since Oster discloses the tape as retractable).

Regarding claim 8, Oster discloses the spindle as comprising spring biasing means acting on the spindle (see claim 1, part b).

Regarding claim 10, the tape leading edge has a connecting portion (seen clip member 20) to be engagingly received in receiving means (seen as eyelet 16) of a cartridge of a second cartridge, which connecting portion comprises a rigid projecting portion (seen as the projecting portion of clip 20 in Fig. 1), and which receiving means comprises an aperture receiving means (seen as the hole in eyelet 16 in Fig. 1).

Regarding claim 11, Oster fails to disclose a plurality of receiving means disposed radially around the cartridge. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the single eyelet (16) on the cartridge to be a plurality of such eyelets disposed radially around the cartridge, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claim 13, Oster discloses a temporary road traffic barrier as discussed with respect to claim 1 above, and also discloses tape (seen as tape 18) deployed therefrom extending to a receiving means on another cartridge (seen as eyelet 16).

Regarding claim 14, Oster discloses a plurality of road traffic control uprights on at least some of which are mounted the cartridges (since column 2, lines 5-11 disclose an eyelet 16 affixed to the housing 12 so that another clip from another barrier can engage the eyelet 16), with tape deployed therefrom (seen as tape 18) and extending between at least some of the dispenser cartridges (see Fig. 1).

Regarding claim 15, Oster discloses the limitations of the claimed invention as discussed with respect to claim 1 above.

Regarding claim 16, Oster discloses a method as recited as discussed with respect to the elements of claim 1 above.

Regarding claim 17, Oster discloses at least one terminating mounting unit (which can be viewed as another barrier 10) and a receiving means (seen as eyelet 16), the method including engaging the leading edge of the dispense tape (18) from at least one of the cartridges to the receiving means on such a terminating mounting unit (since the leading edge 20 of tape 18 can be engaged to an eyelet 16 on another barrier 10).

Regarding claims 18, 19, 21 and 22, Oster does not specify the flexibly deforming configuration. The examiner takes official notice that it is well known to use resilient material as the material of construction in roadway devices in order to obtain a durable, lightweight and inexpensive device. For these reasons, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used resilient material as the material of Oster. Use of this material would meet recitations of "adapted to flexibly deform."

Regarding claim 20, the diameter of the lower end of housing (12) is larger than the diameter of post (22) as shown in Fig. 1.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oster and Ross as applied above, and further in view of Signorelli (US 6,053,657).

Oster does not disclose the tape incorporating a surface pattern or layer with hazard warning markings or information, and fails to disclose the tape as having reflective surfaced material. Fig. 11 of Signorelli designates "work area" on the tape as an indicator, and states in column 1, lines 29-30 that reflective materials may also be used to improve visibility. It would

have been obvious to one having ordinary skill in the art at the time the invention was made to modify the barrier unit of Oster/Ross to have a suitable hazard warning or information on it and have tape with reflective material as taught by Signorelli, since such barrier units are used to alert and divert vehicles and dispense safety material (Col 1, lines 5-12).

Claims 1-7, 8, 10, 11 and 13-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oster (U.S. Patent 4,844,420) as applied above, and further in view of Signorelli (US 6,053,657).

Regarding claim 1, Oster discloses a barrier unit (seen as barrier 10) capable of being mounted on a road traffic control upright (seen as post 22 and adapter 36) including a tape cartridge (52), hollow to define a tape storage cavity (12), a spindle (30) rotatably mounted in the cavity having tape (18) wound thereon, a deploying aperture in the cartridge through which at least a leading edge of the tape projects externally (see Figure 1), a receiving means on the cartridge to engagingly receive a leading edge of tape from another cartridge in use (16), mounting means (12) on a lower part of the cartridge to mount the cartridge on or about an upper part of an upright (22), the mounting means comprising a tubular lower portion (seen as the tubular part of the lower part of housing 12) shaped to cooperatively engage around an upper portion of the upright in an interference fit (as seen in Fig. 2A since there's frictional contact between the bottom of housing 12 and adapter 36). Oster does not teach the tapered configuration; however, it is well known to use tapered configurations with roadway barriers, as exemplified by the barrier unit on the traffic cone taught by Signorelli (Figure 5). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used

this as the shape of Oster in order to best suit a particular application. Note the recitation of friction fit of Signorelli implies some deformation. This meets claim recitations since there is no degree of deformation specified. In other words, there is inherently some degree of deformation in a friction fit and even a minute degree is within the scope of the claim recitations.

Regarding claims 5 and 6, Oster does not disclose the tape incorporating a surface pattern or layer with hazard warning markings or information, and fails to disclose the tape as having reflective surfaced material. Fig. 11 of Signorelli designates "work area" on the tape as an indicator, and states in column 1, lines 29-30 that reflective materials may also be used to improve visibility. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the barrier unit of Oster to have a suitable hazard warning or information on it and have tape with reflective material as taught by Signorelli, since such barrier units are used to alert and divert vehicles and dispense safety material (Col 1, lines 5-12).

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oster/Ross or Oster/Signorelli as applied above, and further in view of Langlie et al (US 6,595,496).

Oster does not disclose releasable locking means. Langlie teaches a lock lever (54) to forcibly clamp the fence strand material (34) against a finger (60) see Fig. 4) and against the housing (30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the barrier unit of Oster/Ross to include a releasable locking means as taught by Langlie, since such a locking means provides the ability to lock the fence strand material or a tape in a particular position at a desired length for use.

Response to Arguments

Applicant's arguments filed 22 May 2007 have been considered but are moot in view of the new grounds of rejection. Ross and Signorelli clearly show that it is within ordinary skill to attach a barrier unit to a road traffic cone. Ross also shows material deformation and Signorelli teaches a friction fit, which meets claim recitations since there is no degree of deformation specified. In other words, there is inherently some degree of deformation in a friction fit and even a minute degree is within the scope of the claim recitations.

Conclusion

Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 571-272-6989. The examiner can normally be reached on Tuesday through Friday, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary Hartmann/
Primary Examiner, Art Unit 3671